

# SENATE BILL No. 165

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-3.1-34.

**Synopsis:** Indiana new markets job act. Provides for an Indiana new markets tax credit against state taxes similar to the federal new markets tax credit. Excludes from the definition of a qualified active low income community business a business that is primarily engaged in providing home ownership services. Excludes from the definition of a qualified active low income community business a business that is primarily engaged in providing child care services, unless the business is a licensed child care center, child care home, or child care ministry that has the highest rating under the paths to QUALITY program. Requires a qualified community development entity to pay the state a conditionally refundable performance fee of \$500,000 and a nonrefundable application fee of \$5,000 for each qualified equity investment that the qualified community development entity seeks to have approved by the Indiana economic development corporation (IEDC). Provides that a denial of an application by the IEDC does not create a private right of action for the applicant. Limits fees that may be charged to a qualified active low income community business. Provides that an equity investment must be made before January 1, 2016, to qualify for the new markets tax credit. Provides that the IEDC may not certify more than \$10,000,000 in new markets tax credits per state fiscal year. Provides that the IEDC is required to issue letter rulings requested by taxpayers, similar to private letter rulings issued by the Internal Revenue Service at the federal level, regarding the Indiana new markets tax credit. Requires an annual report to the budget committee by the IEDC on the credit program.

**Effective:** January 1, 2014 (retroactive).

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January 8, 2014, read first time and referred to Committee on Commerce, Economic Development & Technology.

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PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## SENATE BILL No. 165

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 6-3.1-34 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 3 JANUARY 1, 2014 (RETROACTIVE)]:
- 4 **Chapter 34. Indiana New Markets Job Act**
- 5 **Sec. 1. This chapter applies only to taxable years beginning after**
- 6 **December 31, 2013.**
- 7 **Sec. 2. The following definitions apply throughout this chapter:**
- 8 (1) "Applicable percentage" means:
- 9 (A) zero percent (0%) for the first two (2) credit allowance
- 10 dates;
- 11 (B) seven percent (7%) for the third credit allowance date;
- 12 and
- 13 (C) eight percent (8%) for the next four (4) credit
- 14 allowance dates.
- 15 (2) "Credit allowance date" means, with respect to any
- 16 qualified equity investment:



- 1 (A) the date on which the investment is initially made; and  
2 (B) each of the six (6) anniversary dates immediately  
3 following the date specified in clause (A).  
4 (3) "IEDC" refers to the Indiana economic development  
5 corporation.  
6 (4) "Long term debt security" means any debt instrument  
7 issued by a qualified community development entity, at par  
8 value or at a premium, with an original maturity date of at  
9 least seven (7) years after the date the debt instrument is  
10 issued, with no acceleration of repayment, amortization, or  
11 prepayment features before the original maturity date. The  
12 qualified community development entity that issues the debt  
13 instrument may not make cash interest payments on the debt  
14 instrument during the period beginning on the date of  
15 issuance and ending on the final credit allowance date in an  
16 amount that exceeds the cumulative operating income, as  
17 defined by regulations adopted under Section 45D of the  
18 Internal Revenue Code, of the qualified community  
19 development entity for that period before giving effect to the  
20 expense of the cash interest payments. The foregoing does not  
21 limit the holder's ability to accelerate payments on the debt  
22 instrument if the issuer has defaulted on covenants designed  
23 to ensure compliance with this chapter or Section 45D of the  
24 Internal Revenue Code.  
25 (5) "Low income community" has the meaning set forth in  
26 Section 45D of the Internal Revenue Code.  
27 (6) "Paths to QUALITY program" refers to the program  
28 established by IC 12-17.2-2-14.2.  
29 (7) "Purchase price" means the amount paid to an issuer of a  
30 qualified equity investment for the qualified equity  
31 investment.  
32 (8) "Qualified active low income community business" has the  
33 meaning set forth in Section 45D of the Internal Revenue  
34 Code and 26 CFR 1.45D-1. A business is considered a  
35 qualified active low income community business for the  
36 duration of the qualified community development entity's  
37 investment in, or loan to, the business if the qualified  
38 community development entity reasonably expects, at the time  
39 the qualified community development entity makes the  
40 investment or loan, that the business will continue to satisfy  
41 the requirements for being a qualified active low income  
42 community business throughout the entire period of the



investment or loan. The term excludes the following:

(A) Any business that derives or projects to derive fifteen percent (15%) or more of the business's annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by, or under common control with, another business, if the second business does not derive, or project to derive, fifteen percent (15%) or more of its annual revenue from the rental or sale of real estate and is the primary tenant of the real estate leased from the first business.

(B) A business that is primarily engaged in providing home ownership services.

(C) A business that is primarily engaged in providing child care services, unless the business is:

(i) a child care center licensed under IC 12-17.2-4;

(ii) a child care home licensed under IC 12-17.2-5; or

(iii) a child care ministry licensed under IC 12-17.2-6;

that has, at the time the investment is made, the highest rating under the paths to QUALITY program.

(9) "Qualified community development entity" has the meaning set forth in Section 45D of the Internal Revenue Code for any period during which an allocation agreement is in effect between the entity and the Community Development Financial Institutions Fund of the United States Department of the Treasury with respect to credits authorized by Section 45D of the Internal Revenue Code that includes Indiana within the service area described in the allocation agreement. The term includes a subsidiary community development entity of a qualified community development entity.

(10) "Qualified equity investment" means any equity investment in, or long term debt security issued by, a qualified community development entity:

(A) that is made or acquired after December 31, 2013, and before January 1, 2016, at its original issuance solely in exchange for cash;

(B) of which at least eighty-five percent (85%) of the cash purchase price is used by the issuing qualified community development entity before the first anniversary of the initial credit allowance date to make qualified low income community investments in qualified active low income community businesses located in Indiana;

(C) that is designated by the issuing qualified community



development entity as a qualified equity investment; and  
 (D) that is certified by the IEDC under section 7 of this chapter.

The term includes any qualified equity investment that does not meet the condition specified in clause (A) if the investment was a qualified equity investment in the hands of a previous holder.

(11) "Qualified low income community investment" means any capital or equity investment in, or loan to, any qualified active low income community business.

(12) "State tax liability" means a person's total tax liability that is incurred under:

(A) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);

(B) IC 6-5.5 (the financial institutions tax);

(C) IC 27-1-18-2 (the insurance premiums tax); and

(D) IC 27-1-20-12 (retaliatory tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

(13) "Taxpayer" means an individual, a corporation, a partnership, or another person or entity that has state tax liability.

**Sec. 3.** Any entity that makes a qualified equity investment earns a vested right to a credit against the entity's state tax liability that may be used as follows:

(1) For each taxable year that includes a credit allowance date of the qualified equity investment, the entity, or subsequent holder of the qualified equity investment, is entitled to claim part of the credit against the entity's or the subsequent holder's state tax liability for the taxable year.

(2) Each taxable year, subject to subdivision (3), the credit amount equals:

(A) the applicable percentage associated with the credit allowance date that occurs during the taxable year; multiplied by

(B) the purchase price paid to the issuer of the qualified equity investment.

(3) The amount of the tax credit claimed may not exceed the amount of the taxpayer's state tax liability for the taxable year for which the tax credit is claimed.

**Sec. 4. (a)** If:



1 (1) a pass through entity does not have state tax liability  
 2 against which the tax credit provided by this chapter may be  
 3 applied; and

4 (2) the pass through entity would be eligible for the tax credit  
 5 if the pass through entity were a taxpayer;  
 6 a shareholder, partner, or member of the pass through entity is  
 7 entitled to a tax credit under this chapter.

8 (b) Tax credits earned by a pass through entity may be allocated  
 9 to the partners, members, or shareholders of the pass through  
 10 entity for their direct use in accordance with the provisions of any  
 11 agreement among the partners, members, or shareholders.

12 Sec. 5. (a) If the amount of a tax credit for a taxpayer in a  
 13 taxable year exceeds the taxpayer's state tax liability for that  
 14 taxable year, the taxpayer may carry the excess over to a  
 15 subsequent taxable year. The amount of the tax credit carryover  
 16 from a taxable year is reduced each taxable year thereafter to the  
 17 extent that the carryover is used by the taxpayer to obtain a tax  
 18 credit under this chapter for any subsequent taxable year.

19 (b) A taxpayer is not entitled to a carryback or refund of an  
 20 unused tax credit.

21 Sec. 6. The tax credit provided by this chapter is not saleable on  
 22 the open market.

23 Sec. 7. (a) After July 31, 2014, a qualified community  
 24 development entity may apply to the IEDC to have an equity  
 25 investment or a long term debt security designated as a qualified  
 26 equity investment that meets the requirements for the tax credit  
 27 provided by this chapter. An application submitted under this  
 28 subsection must include the following:

29 (1) Evidence of the applicant's certification as a qualified  
 30 community development entity, including evidence that the  
 31 applicant's service area includes Indiana.

32 (2) A copy of an allocation agreement executed by the  
 33 applicant, or its controlling entity, and the Community  
 34 Development Financial Institutions Fund of the United States  
 35 Department of the Treasury.

36 (3) A certificate executed by an executive officer of the  
 37 applicant attesting that the allocation agreement remains in  
 38 effect and has not been revoked or canceled by the  
 39 Community Development Financial Institutions Fund of the  
 40 United States Department of the Treasury.

41 (4) A description of the proposed amount, structure, and  
 42 purchaser of the qualified equity investment.



(5) Identifying information for any entity that will earn tax credits as a result of the issuance of the qualified equity investment, if known.

(6) Examples of the types of qualified active low income community businesses in which the applicant, its controlling entity, or affiliates of its controlling entity have invested under the federal new markets tax credit program. An applicant is not required when submitting an application to identify a qualified active low income community business in which the applicant will invest.

(7) A nonrefundable application fee of five thousand dollars (\$5,000). This fee shall be paid to the IEDC and shall be required of each application submitted.

(8) The refundable performance fee of five hundred thousand dollars (\$500,000) required by section 11(a) of this chapter.

(b) Within thirty (30) days after receipt of an application submitted under subsection (a), including the payment of the application fee and the refundable performance fee, the IEDC shall grant or deny the application in full or in part. If the IEDC denies any part of the application, the IEDC shall inform the qualified community development entity of the grounds for the denial. A denial of an application by the IEDC does not create a private right of action for the applicant. If the qualified community development entity provides any additional information required by the IEDC or otherwise completes the application within fifteen (15) business days after the notice of denial, the application is considered completed as of the original date of submission. If the qualified community development entity fails to provide the information or complete the application within the fifteen (15) day period, the application remains denied and must be resubmitted in full with a new submission date.

(c) Subject to subsection (d), if the application is complete, the IEDC shall certify the proposed equity investment or long term debt security as a qualified equity investment that is eligible for tax credits under this chapter. The IEDC shall provide written notice of the certification to the qualified community development entity and to the department. The notice must include the names of those entities that earned the credits and their respective credit amounts. If the names of the entities that are eligible to use the credits change due to a transfer of a qualified equity investment or a change in allocation of credits under section 4(b) of this chapter, the qualified community development entity shall notify the IEDC



1 of the change. The IEDC shall then notify the department.

2 (d) The IEDC shall certify qualified equity investments in the  
3 order applications are received by the IEDC. Applications received  
4 on the same day are considered to have been received  
5 simultaneously. If the sum of the amounts of the proposed qualified  
6 equity investments submitted in applications received on the same  
7 day would cause the limitation specified in subsection (e) to be  
8 exceeded, the IEDC shall ask each applicant that submitted an  
9 application that day whether the applicant is willing to accept a  
10 partial certification of the applicant's proposed qualified equity  
11 investment or would instead prefer to withdraw its application. If  
12 the sum of the proposed qualified equity investments of the  
13 applicants that have not withdrawn their applications would not  
14 cause the limit specified in subsection (e) to be exceeded, the IEDC  
15 shall certify each proposed qualified equity investment of the  
16 applicants that have not withdrawn their applications in full. If the  
17 sum of the proposed qualified equity investments of the applicants  
18 that have not withdrawn their applications would cause the limit  
19 specified in subsection (e) to be exceeded, the IEDC shall certify a  
20 fractional amount of each proposed qualified equity investment  
21 described in applications that were received that day and not  
22 withdrawn equal to:

23 (1) the remaining amount of the limitation specified in  
24 subsection (e) at the conclusion of the previous day; multiplied  
25 by

26 (2) the ratio of the amount of the proposed qualified equity  
27 investment requested in an application to the total amount of  
28 proposed qualified equity investments requested in all  
29 applications received that day.

30 (e) The IEDC may not certify qualified equity investments that  
31 earn tax credits at the applicable percentage rate that would  
32 exceed more than ten million dollars (\$10,000,000) of tax credits  
33 under this chapter during any state fiscal year.

34 (f) An approved applicant may transfer all or a part of its  
35 certified qualified equity investment authority to its controlling  
36 entity or any subsidiary qualified community development entity  
37 of the controlling entity, if the applicant provides the information  
38 required in the application with respect to the transferee and the  
39 applicant notifies the IEDC of the transfer within thirty (30) days  
40 after the transfer.

41 (g) Within thirty (30) days after the applicant receives notice of  
42 certification, the qualified community development entity or any





transferee under subsection (f) shall issue the qualified equity investment and receive cash in the amount of the certified amount. The qualified community development entity or transferee under subsection (f) must provide the IEDC with evidence of the receipt of the cash investment within ten (10) business days after receipt. If the qualified community development entity or any transferee under subsection (f) does not receive the cash investment and issue the qualified equity investment within thirty (30) days after receipt of the certification notice, the certification lapses and the entity may not issue the qualified equity investment without reapplying to the IEDC for certification. A lapsed certification reverts back to the IEDC and may be reissued, first, if applicable, to applicants that received a reduced certification of a qualified equity investment under subsection (d), and, thereafter, if any part of the lapsed certification remains, to applicants in accordance with subsection (c).

(h) The IEDC shall transfer the nonrefundable application fees collected by the IEDC under subsection (a)(7) to the treasurer of state. The treasurer of state shall deposit the nonrefundable application fees received from the IEDC under this section in the state general fund.

Sec. 8. The department shall recapture part of the credit provided by this chapter from an entity that claims the credit on a return, to the extent any of the following apply:

(1) Any amount of a federal tax credit available with respect to a qualified equity investment that is eligible for a credit under this chapter is recaptured under Section 45D of the Internal Revenue Code. If this subdivision applies, the recapture amount is proportionate to the federal recapture amount with respect to the qualified equity investment.

(2) The issuer redeems or makes principal repayment with respect to a qualified equity investment before the seventh anniversary on which the qualified equity investment is made. If this subdivision applies, the recapture amount is proportionate to the amount of the redemption or repayment with respect to the qualified equity investment.

(3) The issuer fails to invest an amount equal to eighty-five percent (85%) of the purchase price of the qualified equity investment in qualified low income community investments in Indiana within twelve (12) months of the issuance of the qualified equity investment and fails to maintain at least eighty-five percent (85%) of the level of investment in



qualified low income community investments in Indiana until the last credit allowance date for the qualified equity investment. For purposes of this subdivision, an investment is considered held by an issuer even if the investment has been sold or repaid if the issuer reinvests an amount equal to the capital returned to or recovered by the issuer from the original investment, exclusive of any profits realized, in another qualified low income community investment within twelve (12) months after the receipt of the capital. An issuer is not required to reinvest capital returned from qualified low income community investments after the sixth anniversary of the issuance of the qualified equity investment, the proceeds of which were used to make the qualified low income community investment, and the qualified low income community investment is considered held by the issuer through the seventh anniversary of the qualified equity investment's issuance.

(4) At any time before the final credit allowance date of a qualified equity investment, the issuer uses the cash proceeds of the qualified equity investment to make qualified low income community investments in any one (1) qualified active low income community business, including affiliated qualified active low income community businesses, in excess of ten million dollars (\$10,000,000) of cash proceeds of the qualified equity investment, exclusive of reinvestments of capital returned or repaid with respect to earlier investments in the qualified active low income community business and its affiliates.

Sec. 9. A recapture provision described in section 8 of this chapter is subject to a six (6) month cure period. The department may not take action to recapture part of the credit provided by this chapter in a circumstance described in section 8 of this chapter until the qualified community development entity is given notice of noncompliance and afforded six (6) months from the date of the notice to cure the noncompliance.

Sec. 10. (a) As used in this section, "fund" refers to the new markets performance guarantee fund established in subsection (b).

(b) The new markets performance guarantee fund is established within the state treasury.

(c) The fund consists of fees paid under this chapter by qualified community development entities to the state under section 11 of this chapter.



1 (d) The treasurer of state shall administer the fund.

2 (e) Money in the fund at the end of a state fiscal year does not  
3 revert to the state general fund.

4 (f) The treasurer of state shall hold a fee deposited in the fund  
5 until a determination is made whether a qualified community  
6 development entity that paid the fee has complied with section  
7 11(b) of this chapter. If the treasurer of state receives notice from  
8 the department under section 11(d) of this chapter that a qualified  
9 community development entity is no longer eligible for a refund of  
10 the fee, the treasurer of state shall transfer the qualified  
11 community development entity's fee from the fund to the state  
12 general fund.

13 Sec. 11. (a) A qualified community development entity seeking  
14 to have an equity investment or long term debt security designated  
15 as a qualified equity investment that is eligible for tax credits under  
16 this chapter must pay a fee in the amount of five hundred thousand  
17 dollars (\$500,000) to the IEDC. The IEDC shall transfer a fee  
18 payable under this subsection to the treasurer of state for deposit  
19 in the new markets performance guarantee fund under section 10  
20 of this chapter.

21 (b) A qualified community development entity that has had an  
22 equity investment or long term debt security designated as a  
23 qualified equity investment eligible for tax credits under this  
24 chapter must meet the following requirements:

25 (1) The qualified community development entity and its  
26 subsidiary qualified community development entities must:

27 (A) issue the total amount of qualified equity investments  
28 certified by the IEDC under this chapter; and

29 (B) receive cash in the total amount certified under section  
30 7(c) of this chapter.

31 (2) The qualified community development entity or any  
32 subsidiary qualified community development entity that issues  
33 a qualified equity investment certified under this chapter  
34 must meet the investment requirement under section 8(3) of  
35 this chapter before the second credit allowance date of the  
36 qualified equity investment.

37 (c) If the department determines that a qualified community  
38 development entity has met the conditions specified in subsection  
39 (b), the department shall notify the qualified community  
40 development entity and the auditor of state that the qualified  
41 community development entity is entitled to a refund of the fee  
42 paid under subsection (a). The auditor of state shall then issue a



1 warrant to the qualified community development entity for the  
2 amount of the fee paid by the qualified community development  
3 entity under subsection (a).

4 (d) If the department determines that a qualified community  
5 development entity has failed to meet the condition specified in  
6 subsection (b)(2), the department shall notify the qualified  
7 community development entity. The qualified community  
8 development entity then has six (6) months from the date the notice  
9 is issued to cure the qualified community development entity's  
10 noncompliance with the condition specified in subsection (b)(2). If  
11 at the end of the six (6) month cure period, the department  
12 determines that the qualified community development entity has  
13 met the condition specified in subsection (b)(2), the department  
14 shall proceed as directed in subsection (c). If at the end of the six  
15 (6) month cure period, the department determines that the  
16 qualified community development entity has failed to meet the  
17 condition specified in subsection (b)(2), the department shall notify  
18 the qualified community development entity, the treasurer of state,  
19 and the auditor of state that the qualified community development  
20 entity is no longer eligible for a refund of the fee.

21 Sec. 12. (a) As used in this section, "letter ruling" means a  
22 written interpretation of law as applied to a specific set of facts  
23 submitted by an entity requesting the interpretation.

24 (b) The IEDC shall issue letter rulings regarding the credit  
25 provided by this chapter, subject to the terms and conditions set  
26 forth in this section.

27 (c) The IEDC shall respond to a request for a letter ruling  
28 within sixty (60) days after receiving the request. The applicant  
29 may provide a draft letter ruling for the IEDC's consideration. The  
30 applicant may withdraw the request for a letter ruling, in writing,  
31 before the issuance of the letter ruling. The IEDC may refuse to  
32 issue a letter ruling for good cause, but must state the specific  
33 reasons for refusing to issue the letter ruling. Good cause includes  
34 the following:

- 35 (1) The applicant is requesting that the IEDC determine  
36 whether a statute is constitutional or a regulation is lawful.
- 37 (2) The request involves a hypothetical situation or alternative  
38 plans.
- 39 (3) The facts or issues presented in the request are unclear,  
40 overbroad, insufficient, or otherwise inappropriate as a basis  
41 upon which to issue a letter ruling.
- 42 (4) The issue is currently being considered in a rulemaking



1 procedure, contested case, or other agency or judicial  
 2 proceeding that may definitively resolve the issue.

3 (d) Letter rulings bind the IEDC, its agents and their successors,  
 4 and the department until after the entity or its shareholders,  
 5 members, or partners, as applicable, claim all the credits on an  
 6 Indiana tax return, subject to the terms and conditions set forth in  
 7 properly published regulations. A letter ruling applies only to the  
 8 applicant for the letter ruling.

9 (e) In rendering letter rulings and making other determinations  
 10 under this chapter, to the extent applicable, the IEDC shall look for  
 11 guidance to Section 45D of the Internal Revenue Code and the  
 12 regulations issued under Section 45D of the Internal Revenue  
 13 Code.

14 Sec. 13. An entity claiming a credit under this chapter is not  
 15 required to pay any additional tax as a result of claiming the credit,  
 16 including the tax levied under IC 27-1-20-12.

17 Sec. 14. In connection with a qualified low income community  
 18 investment under this chapter, a qualified active low income  
 19 community business, or any affiliate of such a business, may not be  
 20 required to pay any fee to or reimburse any expense of a qualified  
 21 community development entity before the later of:

- 22 (1) the seventh credit allowance date; or
- 23 (2) the date on which the qualified community development
- 24 entity has made qualified low income community investments
- 25 equal to one hundred percent (100%) of the amount of its
- 26 qualified equity investment.

27 However, the qualified active low income community business or  
 28 affiliate may be charged a closing fee, not to exceed two percent  
 29 (2%) of the amount of the qualified low income community  
 30 investment. This section does not preclude the payment of interest  
 31 or dividends with respect to the qualified low income community  
 32 investment as otherwise permitted by this chapter.

33 Sec. 15. The IEDC shall, not later than December 1 each year,  
 34 submit to the budget committee a report on the granting of credits  
 35 under this chapter.

36 SECTION 2. An emergency is declared for this act.

